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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LINDA WEIL,

Plaintiff,

V.

WALMART, INC., a Foreign Corporation;
ROE ENTITIES I-X, inclusive,

Defendants.

CASE NO.: 2:21-cv-01631-JAD-EJY

**[PROPOSED] STIPULATED
CONFIDENTIALITY ORDER
BETWEEN PLAINTIFF LINDA WEIL
AND DEFENDANT WALMART, INC.**

COME NOW Defendants WALMART, INC. (“Defendant”), by and through their attorneys of record, Troy A. Clark, Esq., and Matthew B. Beckstead, Esq., of the law firm Resnick & Louis, P.C., and Plaintiff LINDA WEIL (“Plaintiff”) (collectively with Defendant, the “Parties”), by and through her attorneys of record, Andre M. Lagomarsino, Esq., and Cory M. Ford, Esq., of the law firm Lagomarsino Law, and hereby submit their Proposed Stipulated Confidentiality Order.

The Parties have agreed to and have submitted, and for good cause shown the Court hereby enters, the following Confidentiality Order:

1. This Order shall govern the disclosure of materials designated as Confidential Material in this litigation. “Confidential Material,” as used in this Order, shall refer to any

1 document or item designated as Confidential or Highly Confidential – Attorneys’ Eyes
2 Only, including, but not limited to, documents or items produced during discovery, all
3 copies thereof, and the information contained in such material. Nothing in this Order
4 shall require any party to produce any specific documents or category of documents
5 which a party deems inappropriate for production.

6 **Definitions of Confidential Material**

7 2. “Confidential Material,” as used in this Order, also consists of the following materials
8 and categories of materials:

- 9 a. Materials relating to any privileged, confidential, or nonpublic information,
10 including, but not limited to, trade secrets, research design, development,
11 financial, technical, marketing, planning, personal, or commercial
12 information, as such terms are used in the Federal Rules of Civil Procedure,
13 FRCP 26(c)(1)(G), and any applicable case law interpreting FRCP
14 26(c)(1)(G); contracts; non-public compilations of retail prices; proprietary
15 information; vendor agreements; personnel files; claim/litigation information;
16 and nonpublic policies and procedures shall be deemed “Confidential.”
- 17 b. Materials containing corporate trade secrets, nonpublic research and
18 development data, including, but not limited to, cost data, pricing formulas,
19 inventory management programs, and other sales or business information not
20 known to the public; information obtained from a non-party pursuant to a non-
21 disclosure agreement; and customer-related Protected Data shall be deemed
22 “Highly Confidential – Attorneys’ Eyes Only.”
- 23 c. “Protected Data” shall refer to any information that a party believes in good
24 faith to be subject to federal, state or foreign data protection laws or other
25 privacy obligations. Examples of such data protection laws include, but are not
26 limited to, The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.* (financial
27 information); and The Health Insurance Portability and Accountability Act and
28 the regulations thereunder, 45 C.F.R. Part 160 *et seq.* and Subparts A and E of

Part 164 (individually identifiable health information). Certain Protected Data may compel alternative or additional protections beyond those afforded Highly Confidential – Attorneys’ Eyes Only material, in which event the Parties shall meet and confer in good faith and, if unsuccessful, shall move the Court for appropriate relief.

The Parties shall not designate as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information that is already public knowledge.

3. The Parties agree that such Confidential Material as described in Paragraph 2 should be given the protection of an Order of this Court to prevent injury through disclosure to persons other than those persons involved in the prosecution or defense of this litigation.

Procedure for Designating Information as Confidential or Highly Confidential

4. To designate information as confidential, the producing party shall mark Confidential Material with the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Parties shall submit confidential discovery responses, such as answers to interrogatories or answers to requests for admissions, in a separate document stamped with the appropriate legend designating those responses as Confidential Material. The Receiving Party may make copies of Confidential Material and such copies shall become subject to the same protections as the Confidential Material from which those copies were made.

a. Information on a disk or other electronic format (e.g., a native format production) may be designated confidential by marking the storage medium itself (or the native file's title) with the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." The Receiving Party shall mark any hard-copy printouts and the storage medium of any permissible copies of such electronic material with the corresponding legend contained on the original and such copies shall become subject to the

1 same protections, as the Confidential Material from which those copies were
2 made.

3 b. Information disclosed at any deposition of a party taken in this action may be
4 designated by the party as confidential by indicating on the record at the
5 deposition that the information is confidential and subject to the provisions of
6 this Order. Alternatively, the party may designate information disclosed at the
7 deposition as confidential by notifying the court reporter and other parties in
8 writing, within fifteen (15) business days of receipt of the transcript, of the
9 specific pages and lines of the transcript which are designated as confidential.
10 The parties may agree to a reasonable extension of the 15-business-day period
11 for designation. Designations of transcripts will apply to audio, video, or other
12 recordings of the testimony. During such 15-business-day period, the entire
13 transcript shall receive confidential treatment. Upon such designation, the
14 court reporter and each party shall affix the “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to the designated
16 pages and segregate them as appropriate.

17 5. A producing party may change the confidentiality designation of materials it has
18 produced, as follows: (1) The producing party must give the receiving parties notice
19 of the change by identifying the documents or information at issue. Once notice is
20 given, the receiving party must make good-faith efforts to ensure that the documents
21 or information are accorded treatment under the new designation. (2) Within a
22 reasonable period after giving notice, the producing party must reproduce the
23 documents or information in a format that contains the new designation. (3) If such
24 information has been disclosed to persons not qualified pursuant to paragraphs 12-13
25 below, the party who disclosed such information shall (a) take reasonable efforts to
26 retrieve previously disclosed Confidential Material; (b) advise such persons that the
27 material is Confidential; and (c) give the producing party written assurance that steps
28 (a) and (b) have been completed.

1 **Data Security**

2 6. The Parties agree to provide adequate security to protect data produced by the other
3 party(ies) or by non-parties. This includes secure data storage systems, established
4 security policies, and security training for employees, contractors and experts.
5 Adequate security also includes such measures as data encryption in transit, data
6 encryption at rest, data access controls, and physical security, whether
7 hosted/outsourced to a vendor or on premises. At a minimum, any receiving party
8 subject to the terms of this Confidentiality Order, will provide reasonable measures to
9 protect non-client data consistent with the American Bar Association Standing
10 Committee on Ethics and Professional Responsibility, Formal Opinion 477R.

11 **Clawback Provisions**

12 7. The production of privileged or work-product protected documents, electronically
13 stored information (ESI) or information, whether inadvertent or otherwise, is not a
14 waiver of the privilege or protection from discovery in this case or in any other federal
15 or state proceeding.
16 8. This Order shall be interpreted to provide the maximum protection allowed by Federal
17 Rule of Evidence (FRE) 502(d) and shall be enforceable and granted full faith and
18 credit in all other state and federal proceedings by 28 U.S.C. § 1738. In the event of
19 any subsequent conflict of law, the law that is most protective of privilege and work
20 product shall apply.
21 9. Nothing contained herein is intended to or shall serve to limit a party's right to conduct
22 a review of documents, ESI or information (including metadata) for relevance,
23 responsiveness and/or segregation of privileged and/or protected information before
24 production.
25 10. If the receiving party has reason to believe that a produced document or other
26 information may reasonably be subject to a claim of privilege, then the receiving party
27 shall immediately sequester the document or information, cease using the document
28 or information and cease using any work product containing the information, and shall

1 inform the producing party of the beginning BATES number of the document or, if no
2 BATES number is available, shall otherwise inform the producing party of the
3 information.

4 11. A producing party must give written notice to any receiving party asserting a claim of
5 privilege, work-product protection, or other ground for reclaiming documents or
6 information (a “clawback request”). After a clawback request is received, the
7 receiving party shall immediately sequester the document (if not already sequestered)
8 and shall not review or use that document, or any work product containing information
9 taken from that document, for any purpose. The parties shall meet and confer
10 regarding any clawback request.

11 **Who May Receive Confidential and Highly Confidential Information**

12 12. *Confidential.* Any Confidential material and the information contained therein shall
13 be disclosed only to the Court, its staff, in-house counsel and outside counsel of record
14 for each party, and also shall be disclosed on a need-to-know basis only to the parties,
15 counsel’s staff personnel, employees of a party to whom disclosure is necessary in
16 connection with the preparation for and trial of this action, and any witnesses in the
17 case (including consulting and testifying experts) as may from time to time reasonably
18 be necessary in prosecution or defense of this action.

19 13. *Highly Confidential—Attorneys’ Eyes Only Material.* Material and information
20 designated as “Highly Confidential—Attorneys’ Eyes Only” shall only be disclosed
21 to the Court, its staff, in-house and outside counsel of record for each party, the
22 secretarial, clerical, and paralegal staff of each, and consulting and testifying experts
23 retained by a party in this action.

24 14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the foregoing,
25 Confidential Material shall not be disclosed to any current or former employees of, or
26 current or former consultants, advisors, or agents of, a direct competitor of any party
27 named in the litigation. If a Receiving Party is in doubt about whether a particular
28 entity is a direct competitor of a party named in this lawsuit, then before disclosing

1 any Confidential Material to a current or former employee, consultant, advisor, or
2 agent of that entity, the Receiving Party's counsel must confer with counsel for the
3 Producing Party.

4 *15. Persons Receiving Confidential Material Must Sign Exhibit A.* Counsel for each party
5 shall advise all persons to whom Confidential Material is disclosed pursuant to this
6 Order of the existence of this Order and shall provide all such persons (other than the
7 Court and its staff) with a copy of this Order. Counsel shall also require such persons
8 to execute the Declaration attached as Exhibit A, prior to the disclosure of Confidential
9 Material.

10 *16. Duties in the Event of Unauthorized Disclosures.* It shall be the obligation of counsel,
11 upon learning of any unauthorized disclosure or threatened unauthorized disclosure of
12 Confidential Material or information contained therein, or any other breach or
13 threatened breach of the provisions of this Order, to promptly notify counsel for the
14 Producing Party. The notification shall be supplemented with reasonable details of the
15 circumstances of the disclosure in order to permit the Producing Party to understand
16 and take appropriate steps. Each party and its counsel agree to take reasonable and
17 good-faith efforts to contain or limit any breach promptly upon receiving notice of it,
18 and to make reasonable and good-faith attempts to retrieve any unauthorized
19 disclosure of documents or information. This provision does not limit the producing
20 party's entitlement to damages resulting from any breach of this Order.

21 **Authorized Uses of Confidential Material**

22 17. Confidential Material shall only be used for the purpose of litigating the above-
23 captioned lawsuit and may not be used in other lawsuits.

24 18. Persons having knowledge of Confidential Material and information contained
25 therein, due to their participation in the conduct of this litigation, shall use such
26 knowledge and information only as permitted herein, and such persons shall not
27 disclose such Confidential Material, their contents, or any portion or summary thereof
28 to any person(s) not involved in the conduct of this litigation.

1 19. If any person having access to the Confidential Material herein shall violate this Order,
2 he/she may be subject to sanctions by the Court and may be liable to pay for the
3 damages caused to the Producing Party by his/her violation.

4 **Challenges to the Designation of Confidential Material**

5 20. Any party or interested member of the public may move the Court to modify the
6 designation of any documents or information produced in this litigation (either to
7 include additional protection with respect to confidentiality or to remove a confidential
8 designation). Before making such a motion, the party or an interested member of the
9 public shall first attempt to resolve such dispute with the producing party's counsel.
10 Pending resolution of any challenges to the designation of documents or information,
11 the material at issue shall continue to be treated as Confidential Material until ordered
12 otherwise by the Court. The burden shall be on the party seeking to modify the
13 designation to show that the producing party's designation is inappropriate.

14 **Withholding of Information**

15 21. *Non-relevant Attachments.* The parties will not produce non-relevant attachments that
16 are attached to relevant emails. When an attachment is withheld, either for privilege
17 or non-responsiveness, the producing party shall produce a one-page PDF image in
18 place of the withheld attachment, correspondingly stating "Attachment Withheld-
19 Privileged" or "Attachment Withheld-Nonresponsive" and bearing a sequential
20 BATES number within the family BATES range. If any attachment to an email
21 contains responsive content, then the cover email shall be produced for context,
22 regardless of the cover email's responsiveness. The cover email may be redacted in
23 part to remove sensitive information, as described below.

24 22. *Redactions.* The parties may redact (1) information that is privileged or protected from
25 discovery as work product or by reason of any other applicable privilege or immunity;
26 (2) information subject to non-disclosure obligations imposed by governmental
27 authorities, law or regulation (e.g., protected personal information); and (3) sensitive,
28 non-relevant information, including but not limited to personally identifiable

1 information, trade secrets, or information regarding products, data, or people.
2 Privilege redactions will state, over the redacted portion, “Redacted–Privileged,” and
3 all other redactions will state, “Redacted–Nonresponsive.” Redactions of emails will
4 not redact the names of recipients or the subject line of the emails, unless the subject
5 line is itself privileged or contains the sensitive information described above, in which
6 case only so much of the subject line will be redacted as may be needed. The parties
7 will produce redacted documents in PDF format (or in native format for file types that
8 do not convert well to PDF, such as Excel files) with corresponding searchable OCR
9 text and the associated metadata for the document, ensuring the redacted content is
10 fully protected from disclosure.

11 **Confidential Material in Filings, Hearings, and Trial**

- 12 23. *Confidential Material in Filings.* Without written permission from the Producing Party
13 or a court order secured after appropriate notice to all interested persons, a party may
14 not file Confidential Material in the public record in this action (or in any other action,
15 e.g., an appeal). A party that seeks to file under seal any Confidential Material must
16 comply with LR IA 10-5 and LR IC 4-1(c). Confidential Material may only be filed
17 under seal in a manner prescribed by the Court for such filings.
- 18 24. *Manner of Sealing.* In the event Confidential Materials or portions of transcripts are
19 sealed as confidential by the Court or as described in paragraph 23 above, they shall
20 be filed in an envelope bearing the following designation when deposited:

21 **CONFIDENTIAL**

22 IN ACCORDANCE WITH THE CONFIDENTIALITY ORDER OF THE COURT,
23 THE CONTENTS OF THIS ENVELOPE SHALL BE TREATED AS
24 CONFIDENTIAL AND MUST NOT BE SHOWN TO A PERSON OTHER THAN
THE COURT, ATTORNEYS IN THIS CASE, OR TO PERSONS ASSISTING
THOSE ATTORNEYS.

- 25 25. *Confidential Material in Hearings and Trial.* The provisions of this Order shall not
26 affect, and this Order does not limit, the admissibility of Confidential Material (or
27 references to that material) as evidence at trial, or during a hearing or similar
28 proceeding in this action. Prior to using Confidential Material or the information

1 contained therein at any hearing that is open to the public, the party seeking to use
2 the Confidential Material must give at least seven (7) days advance notice to the
3 producing party of the intent to use the Confidential Material so that the Producing
4 Party may seek an appropriate Court Order to protect the Confidential Material.

5 **Continuing Effect of This Order and Duty to Destroy**

6 26. This Order shall continue to be binding throughout and after the conclusion of this
7 litigation, including all appeals. Within thirty (30) days of settlement or final
8 adjudication, including the expiration or exhaustion of all rights to appeal or petitions
9 for extraordinary writs, each party or non-party to whom any materials were produced
10 shall, without further request or direction from the Producing Party, promptly destroy
11 all documents, items or data received including, but not limited to, copies or
12 summaries thereof, in the possession or control of any expert or employee. This
13 requirement to destroy includes all documents designated as Confidential Material.
14 The Receiving Party shall submit a written certification to the Producing Party by the
15 30-day deadline that (1) confirms the destruction/deletion of all Confidential
16 Material, including any copies of Confidential Materials provided to persons required
17 to execute Exhibit A (Affidavit), and (2) affirms the Receiving Party has not retained
18 any copies, abstracts, compilations, summaries, or any other format reproducing or
19 capturing any of the Confidential Material. Notwithstanding this provision, outside
20 counsel is entitled to retain an archival copy of filings, depositions, and deposition
21 exhibits.

22 **Procedure if Confidential Material Is Required to Be Produced**

23 27. If any person receiving documents covered by this Order is served with a subpoena,
24 order, interrogatory, or document or civil investigative demand (collectively, a
25 “Demand”) issued in any other action, investigation, or proceeding, and such
26 Demand seeks material that was produced or designated as Confidential Material by
27 someone other than the Receiving Party, the Receiving Party shall give prompt
28 written notice by hand or electronic transmission within five (5) business days of

1 receipt of such Demand to the party or non-party who produced or designated the
2 material as Confidential Material, and shall object to the production of such materials
3 on the grounds of the existence of this Order. At the request of the party or non-party
4 who produced or designated the material as Confidential Material, the Receiving
5 Party shall refuse to comply with the Demand unless (a) ordered to do so by a court
6 with jurisdiction over the Receiving Party; or (b) released in writing by the party or
7 non-party who designated the material as Confidential Material. The burden of
8 opposing the enforcement of the Demand shall fall upon the party or non-party who
9 produced or designated the material as Confidential Material. Compliance by the
10 Receiving Party with any order of a court of competent jurisdiction, directing
11 production of any Confidential Material, shall not constitute a violation of this Order.

12 **Application of This Order to Productions by Third Parties**

13 28. This Order may be used by third parties producing documents in connection with this
14 action. Third parties may designate information as Confidential or Highly
15 Confidential – Attorneys’ Eyes Only.

16 29. If a third party produces (or intends to produce) documents and does not designate
17 (or does not intend to designate) those documents as Confidential Material, then any
18 party to this action may seek to designate that third party’s documents or categories
19 of documents as Confidential Material. In that case, it will be the burden of the party
20 seeking protected status to move for a court order designating the materials as
21 Confidential Material after the parties confer.

22 30. In the event additional parties join or intervene in this litigation, the newly joined
23 party(ies) shall not have access to Confidential Material until its/his/her/their counsel
24 has executed and, at the request of any party, filed with the Court the agreement of
25 such party(ies) and such counsel to be fully bound by this Order.

26 31. The Parties agree that nothing in this Order shall be deemed to limit the extent to
27 which counsel for the Parties may advise or represent their respective clients, conduct
28 discovery, prepare for trial, present proof at trial, including any document designated

1 Confidential Material as set forth herein, or oppose the production or admissibility of
2 any information or documents which have been requested.

3 32. This Order shall remain in full force and effect until such time as it is modified,
4 amended, or rescinded by the Court.

5 Dated this 31st day of October 2022

Dated this 31st day of October 2022

6 **RESNICK & LOUIS, P.C.**

LAGOMARSINO LAW

8 */s/ Matthew B. Beckstead*

8 */s/ Cory M. Ford*

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14 **IT IS SO ORDERED.**

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Eayna J. Zouchah

UNITED STATES MAGISTRATE JUDGE

DATED: October 31, 2022

1 **EXHIBIT A TO CONFIDENTIALITY ORDER**

2 **UNITED STATES DISTRICT COURT**

3 **DISTRICT OF NEVADA**

4 LINDA WEIL,

CASE NO.: 2:21-cv-01631-JAD-EJY

5 Plaintiff,

6 v.

7 WALMART, INC., a Foreign Corporation;
8 ROE ENTITIES I-X, inclusive,

9 Defendants.

10

DECLARATION OF COMPLIANCE WITH CONFIDENTIALITY ORDER

11 1. My name is _____ . I live at _____
12 _____. I am working on behalf (or at
13 the direction and engagement) of _____.

14 2. I am aware that a Confidentiality Order has been entered in the above-captioned lawsuit.
15 A copy of this Confidentiality Order has been given to me, and I have read and understand the
16 provisions of same.

17 3. I acknowledge that documents and information designated as confidential and/or highly
18 confidential pursuant to such Confidentiality Order (“Confidential Materials”) are being disclosed
19 to me only upon the conditions that I agree (a) to be subject to the jurisdiction of this Court, and
20 (b) to comply with that Order. I hereby agree to abide by such Order, subject to all penalties
21 prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the
22 documents and information given confidential treatment under the Confidentiality Order entered
23 in this case will be used by me only to assist counsel for the parties in preparing for litigation of
24 the above-captioned matter. I understand that any use of such Confidential Material in any manner
25 contrary to the provisions of the Confidentiality Order may subject me to the sanctions of this
26 Court for contempt and to liability for any damages caused by my breach of the Confidentiality
27 Order.

1 4. I shall not disclose nor permit to be reviewed or copied said Confidential Materials, or
2 any information derived from, by any person other than the parties and counsel for the parties or
3 members of their staff.

4 5. Within 30 days after the above-captioned lawsuit ends in a final non-appealable order,
5 I agree to destroy all Confidential Materials in my possession.

6 I declare under penalty of perjury under the laws of the State of Nevada that the
7 foregoing is true and correct.

8 DATED: _____, 20_____
9

Signature

11 _____
Printed Name

15 Page 2

16 Exhibit A, Declaration of Compliance with Confidentiality Order